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No. 87-1346

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

BONITO BOATS, INC.,

Petitioner,

v.

THUNDER CRAFT BOATS, INC.,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of Florida

BRIEF OF AMICI CURIAE THE AFTERMARKET BODY PARTS ASSOCIATION AND KEYSTONE AUTOMOTIVE INDUSTRIES, INC., IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Do the federal patent laws preempt state laws that restrict the copying of a manufactured product by prohibiting the use of an efficient method of copying, when both the product and the method of copying are unpatented and in the public domain?

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BRIEF OF AMICI CURIAE THE AFTERMARKET BODY PARTS ASSOCIATION AND KEYSTONE AUTOMOTIVE INDUSTRIES, INC., IN SUPPORT OF RESPONDENT

The Aftermarket Body Parts Association and Keystone Automotive Industries, Inc., as *amici curiae*, submit this brief in support of the holding below that the Florida mold statute is preempted by the federal patent laws and thus is unconstitutional under the Supremacy Clause of the Constitution. *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 515 So. 2d 220 (Fla. 1987).[1]

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[1] This brief is filed with the consent of the parties; letters consenting to the filing of this brief have been lodged with the Clerk.

INTEREST OF AMICI CURIAE

The Aftermarket Body Parts Association ("ABPA") is a trade association established to foster the manufacture, distribution, and sale of automotive replacement body parts. These sheet metal or plastic replacement parts—hoods, fenders, doors, etc.—are known as "crash parts." Keystone Automotive Industries, Inc., ("Keystone") is a California corporation engaged in importing, distributing, and selling crash parts throughout the United States.

Competition in the manufacture and sales of crash parts is a relatively new phenomenon which could well be destroyed by the application of state mold statutes similar to the Florida act at issue in this case. Prior to the 1980s, the original equipment automobile manufacturers ("OEM manufacturers") maintained virtual monopolies in the manufacture of the crash parts used to repair their respective automobiles. These monopolies were possible in part because existing technology did not allow potential competitors to copy crash parts at a sufficiently low cost and in forms identical to the parts originally designed by OEM manufacturers. The exact copying of crash parts is essential to competition in the aftermarket industry. If a copy of a fender, hood, door, or similar body part is even a few millimeters off, it cannot be used to replace a part damaged in a crash. *See generally In re General Motors Corp.*, 99 F.T.C. 464 (1982).[2]

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[2] In *General Motors Corp.*, the Federal Trade Commission found that, as late as 1982, participation in the market for General Motors ("GM") crash parts was "prohibitively expensive" for anyone other than GM:

> "[E]xpensive as it is for GM, the process would be prohibitively expensive for anyone else. Tooling to manufacture GM crash parts can run to tens of millions of dollars. However, the same dies which are required for service parts are used in the production of original equipment, enabling GM to spread the costs associated with crash part manufacture. . . . It is not difficult to understand why other manufacturers have shown no inclination to incur such large tooling costs simply to produce crash parts. In this market, GM's ownership of the dies used in the manufacture of new cars gives it a wholly natural and decisive competitive advantage over potential manufacturers of crash parts." 99 F.T.C. at 559 (citations omitted).

Over the last few years, several firms have begun to manufacture and distribute automobile crash parts in competition with OEM manufacturers. These competitors have been able to enter the market by using new, sophisticated machines to create the tools and dies necessary to manufacture precise copies of the OEM parts. Although still in its infancy, this aftermarket competition has already lowered prices for crash parts, with a net savings to consumers and their insurance companies of hundreds of millions of dollars each year.

The ABPA and Keystone are concerned that, if the Florida mold statute is upheld in this case, similar state statutes will be used to attack manufacturers and distributors of non-OEM crash parts. One such suit has already been filed by Ford Motor Company against Keystone. *Ford Motor Co.* v. *Keystone*, No. 87-CV-1900-DT (E.D. Mich., pending) (excerpts from the complaint are reproduced in the Appendix). In that action, Ford is seeking, *inter alia*, to enjoin Keystone from selling copies of unpatented Ford crash parts on the ground that the unpatented processes by which the Keystone parts are made violate the "direct molding process acts of the several states." (A2)

Affirmance of the holding below is essential to preserve full competition in the manufacture and sale of items—such as boat hulls and crash parts—which are

in the public domain and do not qualify for federal patent or copyright protection. The mold statutes present a clear threat to this competition to the extent they require competitors to abandon unpatented, low-cost, precise copying processes in favor of more expensive and less accurate methods which would make effective competition far more difficult and very likely impossible.

STATEMENT OF THE CASE

I. THE MOLD STATUTES

Over the past few years, 12 states have enacted statutes to prohibit the manufacture and sale of products made by any "direct molding process." The statutes of nine of these states—including Florida[3]—have banned the use of such direct molding processes with respect to "any manufactured vessel hull or component part of a vessel made by another." Fla. Stat. Ann. § 559.94(2)(a) (West 1988). The prohibited processes are defined to include "any direct molding process in which the original manufactured vessel hull or component part of a vessel is itself used as a plug for the making of the mold, which mold is then used to manufacture a duplicate item." *Id.* § 559.94(1)(a).

The mold statutes of California, Michigan, and Tennessee[4] are similar to the Florida act but signif-

[3] *See* Fla. Stat. Ann. § 559.94 (West 1988); Ind. Code §§ 24-4-8-1 to -7 (Supp. 1988); Kan. Stat. Ann. § 50-802 (Supp. 1986); La. Rev. Stat. Ann. § 51:462 (West 1987); Md. Com. Law Code Ann. § 11-1001 (Supp. 1987); Miss. Code Ann. § 59-21-41 (Supp. 1987); Mo. Ann. Stat. § 306.900 (Vernon Supp. 1988); N.C. Gen. Stat. § 75A-29 (1988); Wis. Stat. Ann. § 134.34 (West Supp. 1987).

[4] *See* Cal. Bus. & Prof. Code §§ 17300-17301 (West 1987); Mich. Comp. Laws §§ 445.621-24 (Supp. 1988); Tenn. Code Ann. §§ 47-50-111, 47-50-113 (1984).

icantly broader. They prohibit the use of a direct molding process to duplicate "any manufactured item." *See* Cal. Bus. & Prof. Code § 17300(a) (West 1987); Mich. Comp. Laws § 445.622 (Supp. 1988); Tenn. Code Ann. § 47-50-111(a) (1984). In the pending case of *Ford Motor Co.* v. *Keystone*, Ford is asserting that these statutes prohibit Keystone from selling replacement automotive crash parts manufactured by its suppliers.[5]

The purpose of these mold statutes is clear: They are designed to prevent potential competitors from using any direct molding process to duplicate products at reduced cost—despite the fact that both the products copied and the method of copying are unpatented and in the public domain. *See Bonito Boats*, 515 So. 2d at 223; *see also Brahma, Inc.* v. *Joe Yeargain, Inc.*, 665 F. Supp. 1447, 1452 (N.D. Cal. 1987). By forcing potential competitors to use more expensive and less accurate copying methods, these statutes erect significant economic barriers to competition and may well prohibit all effective competition in many original products.[6]

II. BOAT HULLS, MOLDING PROCESSES, AND THE FEDERAL PATENT SYSTEM

The Florida mold statute conflicts with the federal patent system which already regulates the copying of boat hulls and the use of direct molding processes. Boat hulls, as manufactured products, are clearly within the subject matter of the federal patent laws. Similarly, the "direct molding process," as defined in

[5] *See* Complaint, *Ford Motor Co.* v. *Keystone*, No. 87-CV-1900-DT (E.D. Mich., pending) (A1-3).

[6] These mold statutes do not address issues such as palming off, mislabeling, source confusion, or any other type of recognized deceptive trade practices traditionally regulated by the states. *Bonito Boats*, 515 So. 2d at 223.

the Florida statute, encompasses a number of different manufacturing processes, all of which are also within the subject matter of the patent system. *See generally* 35 U.S.C. §§ 101, 171.[7]

The federal patent system affords ample protection to manufacturers who invent new boat hulls. Such protection may take the form of a utility patent, a design patent, or a process patent.

A manufacturer who produces a boat hull with new features that improve its performance can obtain a utility patent which accords the manufacturer 17 years of exclusivity in the manufacture, use, or sale of that product. For example, one of many such utility patents—U.S. Patent No. 4,128,072 (Dec. 5, 1978)—awarded to the inventor (Wood) of a power boat hull, was based on the inventor's claim that his new design would improve the boat's performance, increase stability, and allow the boat to "operate in extremely shallow water and still give a soft ride." (Appendix at A10)[8]

The inventor of a new boat hull with an aesthetically pleasing and ornamental design can similarly obtain a design patent which would provide the inventor with up to 14 years of exclusivity, even if the design has no improved functional features. The Appendix contains a few examples of such design pat-

[7] *See also Diamond* v. *Diehr*, 450 U.S. 175, 182 (1981) ("Congress intended statutory subject matter to 'include anything under the sun that is made by man.' ") (quoting S. Rep. No. 1979, 82d Cong., 2d Sess. 6 (1952)).

[8] For other examples of such utility patents, see U.S. Patent No. 3,996,869 (Dec. 14, 1976); U.S. Patent No. 3,930,455 (Jan. 6, 1976); U.S. Patent No. 3,763,810 (Oct. 9, 1973); U.S. Patent No. 3,698,342 (Oct. 17, 1972); U.S. Patent No. 3,600,733 (Aug. 24, 1971).

ents on boat hulls. (A11-19)[9] These patents are but a few of the many patents that the United States Patent Office has awarded covering hull designs.[10]

Molding processes are likewise the subject of process patents, a number of which relate specifically to methods for reproducing boat hulls. One such patent—U.S. Patent No. 3,419,646 (Dec. 31, 1968)—was issued in 1968 to Smith for a direct molding process used in "the making of a mold to duplicate very large plastic objects, *such as a fiber glass boat hull*." (Appendix at A22) (emphasis added). The purpose of this patented process was to "provide a method for making large molded boat hull molds at very low cost, once a prototype hull has been provided." (A23) The patent contemplated that this "prototype" could "itself be a fiber glass plastic boat." (A25)[11]

[9] The design patents included in the Appendix are U.S. Design Patent No. 257,530 (Nov. 18, 1980); U.S. Design Patent No. 246,166 (Oct. 25, 1977); U.S. Design Patent No. 235,753 (July 8, 1975).

[10] *See also* U.S. Design Patent No. 283,416 (Apr. 15, 1986); U.S. Design Patent No. 252,454 (July 24, 1979); U.S. Design Patent No. 249,033 (Aug. 22, 1978); U.S. Design Patent No. 245,973 (Oct. 4, 1977); U.S. Design Patent No. 244,841 (June 28, 1977); U.S. Design Patent No. 244,264 (May 10, 1977); U.S. Design Patent No. [illegible]1,927 (Oct. 19, 1976); U.S. Design Patent No. 239,612 (Apr. 20, 1976); U.S. Design Patent No. 236,332 (Aug. 19, 1975).

[11] Other patents covering molding processes include: U.S. Patent No. 4,118,814 (Oct. 10, 1978); U.S. Patent No. 4,073,049 (Feb. 14, 1978); U.S. Patent No. 3,711,581 (Jan. 16, 1973); U.S. Patent No. 3,388,203 (June 11, 1968); U.S. Patent No. 3,329,546 (July 4, 1967); U.S. Patent No. 3,282,761 (Nov. 1, 1966). Those patents still in force vest the holders with the exclusive right to use the patented process. The application of the mold statute, however, would bar even holders of such patents from using those processes in Florida to copy boat hulls and component parts.

The Smith patent thus covered precisely what the Florida mold statute prohibits: a process by which an original boat hull is used as a prototype or plug in the making of a boat hull mold. The Smith patent expired in 1985. Hence, as a matter of federal patent law, the Smith direct molding process may be freely used by anyone to copy any unpatented boat hull. Yet the Florida mold statute would prohibit the use of Smith's process and any other unpatented direct molding process; and that prohibition would last not the 14 or 17 years of a federal patent, but forever.

The federal patent laws and the Florida mold statute thus constitute two different regulatory regimes that directly and substantially conflict. In striking down the Florida mold statute, the Florida Supreme Court correctly ruled that these two regimes impermissibly clash and, accordingly, that the Florida mold statute is preempted.

SUMMARY OF ARGUMENT

1. The Florida Supreme Court correctly held that the federal patent laws preempt the Florida mold statute. In *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp.* v. *Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964), this Court held that state laws that prohibit the mere act of copying an unpatented product in the public domain are preempted. This is because the patent laws represent a determination by Congress that products and processes within the scope of the federal patent laws but not protected by patents should be freely available for all to make, use, or sell. Boat hulls and direct molding processes come within the scope of the patent laws and in fact are often the subject of utility, design, and process patents. The Florida mold statute thus clashes with the congressional regulatory scheme by banning the use of an unpatented efficient method

of copying unpatented boat hulls in order to stifle competition in the sale of boats.

2. The decisions of this Court in *Goldstein* v. *California*, 412 U.S. 546 (1973), *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470 (1974), and *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257 (1979), support the holding of the Florida Supreme Court. In each case, the Court reaffirmed that Congress has preemptively determined that the public shall be free to make, use, or sell products and processes—such as boat hulls and molding processes—which are within the subject matter of the patent laws and in the public domain.

ARGUMENT

I. THE FLORIDA SUPREME COURT CORRECTLY HELD THAT THE FLORIDA MOLD STATUTE IS PREEMPTED BY THE FEDERAL PATENT LAWS BECAUSE IT WOULD FRUSTRATE FEDERAL PATENT POLICY

The test for federal preemption is well-established: "In this as in other fields, the question of whether federal law preempts state law involves a consideration of whether that law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). Under the Supremacy Clause of the Constitution, no state may enact unfair competition laws that "give protection of a kind that clashes with the objectives of the federal patent laws." *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225, 231 (1964). Thus, the Florida mold statute is preempted if its intent and effect clash with the purposes and objectives of the patent laws.

A. The Patent Laws Represent A Balance Between The Competing Policies Of Encouraging Innovation And Ensuring Free Competition

The Patent and Copyright Clause of the Constitution grants to Congress the authority "[t]o promote

the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, § 8, cl. 8. This provision empowers the federal government to grant patent and copyright rights which are "national in scope." *See* The Federalist No. 43, at 309 (B. Wright ed. 1961). *See also Goldstein* v. *California*, 412 U.S. 546, 556 (1973).

Pursuant to this power, Congress has established a federal patent system which grants inventors of original items or processes the exclusive control over the commercial use of their work for a limited number of years. A utility patent is available for 17 years for "any new and useful" product or process. 35 U.S.C. § 101. A design patent is similarly available for up to 14 years for any "new, original, and ornamental" design for an article of manufacture. 35 U.S.C. § 171.

This federal patent system reflects "a compromise between competing policy interests." *Dawson Chemical Co.* v. *Rohm & Haas Co.*, 448 U.S. 176, 221 (1980). On the one hand, federal patent law seeks to promote innovation by granting an inventor the exclusive authority to make, use, sell, or license the patented product or process within the United States for a prescribed period of time. *See* 35 U.S.C. § 271. Exclusivity is not freely given: "Only inventions and discoveries which furthered human knowledge, and were new and useful, justified the special inducement of a limited private monopoly." *Graham* v. *John Deere Co.*, 383 U.S. 1, 9 (1966). *See also Atlantic Works* v. *Brady*, 107 U.S. 192, 200 (1883).

On the other hand, Congress has carefully crafted the patent laws "to insure competition in the sale of identical or substantially identical products" which are not subject to patents and are in the public domain. *Goldstein* v. *California*, 412 U.S. at 569. When a

patent expires, the right to make the invention and share in its good will passes irretrievably to the public. *Kellogg Co.* v. *National Biscuit Co.*, 305 U.S. 111, 120 (1938). Further, by establishing standards for granting federal patent protection, the patent laws indicate "not only which articles . . . Congress wished to protect, but which configurations it wished to remain free." *Goldstein*, 412 U.S. at 569. A product or process which does not meet federal patent standards, "like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so." *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225, 231 (1964).[12]

This policy of ensuring free competition "runs deep in our law." *Dawson Chemical Co.* v. *Rohm & Haas Co.*, 448 U.S. at 221. It is basic to the growth and free-market nature of our economic system. Any construction of the federal patent laws must be made "in light of this Nation's historical antipathy to monopoly and of repeated congressional efforts to preserve and foster competition." *Deepsouth Packing Co.* v. *Laitram Corp.*, 406 U.S. 518, 530 (1972). This Court thus has always construed patent rights strictly and prohibited any extension of the monopoly or narrowing of the area of public use absent "a clear and certain signal from Congress." *Id.* at 531. *See also*

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[12] These features of the patent laws reflect congressional adoption of the same free-market premise that underlies the antitrust laws: "that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress." *Northern Pac. R. Co.* v. *United States*, 356 U.S. 1, 4 (1958). *See also Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470, 480 (1974) ("The productive effort thereby fostered will have a positive effect on society through the introduction of new products and processes of manufacture into the economy, and the emanations by way of increased employment and better lives for our citizens.").

United States v. *Masonite Corp.*, 316 U.S. 265, 280 (1942).

B. Under *Sears* and *Compco*, State Laws Are Preempted That Restrict The Copying Of Products In The Public Domain

In *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U.S. 225 (1964), and *Compco Corp.* v. *Day-Brite Lighting, Inc.*, 376 U.S. 234 (1964), this Court applied these well-established principles and ruled that the states may not prohibit the copying of a product that is within the subject matter of the patent laws but not the subject of a valid federal patent.[13] In both *Sears* and *Compco*, the lower courts had found that the defendants had violated certain state unfair competition laws by manufacturing and selling light fixtures which were identical copies of unpatented fixtures originally designed and marketed by the plaintiffs. This Court reversed, holding that the federal patent laws preempted the state laws.

The Court based its rulings in *Sears* and *Compco* on the fundamental purposes underlying federal patent law. The Court emphasized that the patent system is designed "to promote invention while at the same time preserving free competition." *Sears*, 376 U.S. at 230-31. The patent system encourages invention "by rewarding the inventor with the right, limited to a term of years fixed by the patent, to exclude others from the use of his invention." *Id.* at 229. Competition is preserved by ensuring that "[a]n unpatentable article, like an article on which the patent has expired, is in the public domain and may be made and sold by whoever chooses to do so." *Id.* at 231. This

[13] These principles were first applied to strike down efforts by a patentee to extend an aspect of its monopoly after the expiration of the patent. *See Kellogg Co.* v. *National Biscuit Co.*, 305 U.S. 111, 120-22 (1938); *Singer Mfg. Co.* v. *June Mfg. Co.*, 163 U.S. 169, 185 (1896).

right includes the right to copy the article "in every detail." *Compco*, 376 U.S. at 238. The Court held that, given this balance, allowing a state to forbid the copying of an unpatented article "would be to permit the State to block off from the public something which federal law has said belongs to the public." *Sears*, 376 U.S. at 232. Such a state law is preempted, for it would effect "too great an encroachment on the federal patent system to be tolerated." *Id.*[14]

The Court succinctly summarized this holding in *Compco*:

> "Today we have held in *Sears, Roebuck & Co.* v. *Stiffel Co.*, *supra*, that when an article is unprotected by a patent or copyright, state law may not forbid others to copy that article. To forbid copying would interfere with the federal policy, found in art. I, § 8, cl. 8, of the Constitution and in the implementing federal statutes, of allowing free access to copy whatever the federal patent and copyright laws leave in the public domain. Here, Day-Brite's fixture has been held not to be entitled to a design or mechanical patent. *Under the federal patent laws it is, therefore, in the public domain and can be copied in every detail by whoever pleases.*" 376 U.S. at 237-38 (emphasis added).[15]

[14] *See also* Brown, *Design Protection: An Overview*, 34 U.C.L.A. L. Rev. 1341, 1381 (1987). *See generally* Kitch, *The Nature and Function of the Patent System*, 20 J.L. & Econ. 265 (1977); Symposium, *Product Simulation: A Right or a Wrong*, 64 Colum. L. Rev. 1178 (1964).

[15] Although the Court in *Sears* and *Compco* prohibited the imposition of liability for the mere act of copying, the Court recognized that a state could require goods to be properly labeled to ensure that there is no misrepresentation by the copyist with respect to their source. *See Sears*, 376 U.S. at 232-33. The mold

Sears and *Compco* thus stand as powerful expressions of the central tenet of the patent preemption doctrine: States cannot in the guise of unfair competition laws place restrictions on the mere act of copying unpatented products which are in the public domain.

C. The Florida Mold Statute Is Preempted Because It Clashes With The Objectives Of The Federal Patent Laws

In conflict with the policy of free competition which underlies the patent system, the Florida mold statute protects original manufacturers of unpatented boat hulls and boat components from competitors who can manufacture identical products at a lower cost. The statute does this by prohibiting the use of a certain unpatented manufacturing process, which the Florida Supreme Court has found to be "an efficient and inexpensive way of duplicating boat hulls." *Bonito Boats*, 515 So. 2d at 223. In forbidding such efficient and inexpensive copying, the statute is intended to grant and has the effect of granting to original manufacturers a substantial degree of freedom from competition in the sale of their unpatented boats.

The conflict between the Florida statute and the federal patent system is unavoidable. As with any other manufactured product, Congress has already determined that boat hulls which are not sufficiently inventive to warrant patent protection or otherwise are not patented should be freely available for copying "in every detail by whoever pleases" to provide the public with the benefits of competition. *See Compco*, 376 U.S. at 238. The Florida statute seeks to stifle that competition by banning the most efficient method

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statutes do not concern labeling but rather are aimed solely at the mere act of copying and prohibit the manufacture and sale of copies no matter how clearly they may be labeled. *Bonito Boats*, 515 So. 2d at 223.

of copying. The statute is thus attempting to do indirectly what *Sears* says it cannot do directly. It builds economic barriers to competition for the purpose of protecting products that Congress has determined should not be protected. Like a ban on copying, such a measure represents "too great an encroachment on the federal patent system to be tolerated." *Sears*, 376 U.S. at 232.[16]

If, as suggested, the particular boat hull at issue in this case is "unpatentable," that is only because Congress has determined that hulls (like any other manufactured product) with such limited novelty should not be protected from free and open competition from would-be copiers. The Florida mold statute clashes with this congressional directive by providing a form of perpetual protection to such products.

The Florida mold statute also conflicts with the federal patent laws because it prohibits the use of any manufacturing *process* in which an original boat hull is used as a plug to make a mold. The protection of such processes is precisely what the patent laws are intended to determine. Under the standards established by Congress, these processes are free for all to use unless they qualify for patent protection.

Petitioner could have obtained patent protection covering a "direct molding process" if the particular process at issue was non-obvious in light of other processes already in the public domain. One such pat-

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[16] This conflict is all the more real when viewed in the light of actual patents. As described above, boat hulls reflecting the creativity required by the patent laws are often the subject of both utility and design patents issued by the Patent Office. (A4-19) The federal courts stand ready to review these boat hull patents and enforce them when they have merit. *See, e.g., Street* v. *Appel*, 239 F.2d 581 (8th Cir. 1957); *Penn Yan Boats, Inc.* v. *Wollard*, 389 F. Supp. 1047 (S.D. Fla. 1975); *Sidewinder Marine, Inc.* v. *Burns*, 176 U.S.P.Q. 499 (C.D. Cal. 1972).

ent was issued by the Patent Office in 1968 for a molding process used in copying fiber glass boat hulls. (A20-26) As that patent explained, the purpose of the process was to duplicate expensive boat hulls at a reduced cost:

> "The construction of a mold for the larger plastic molded boat hulls has, in the past, required a major capital investment for each mold. *It is a major object of the present invention to provide a method for making large molded boat hull molds at very low cost, once a prototype hull has been provided.* Such a hull may be a fiber glass boat hull built from an extremely expensive prototype model or the prototype hull may be a wooden hull constructed by conventional means, which it is now desired to reproduce in fiber glass." (A23) (emphasis added).

As noted above, the molding process described in this 1968 patent passed into the public domain in 1985 when the patent expired. That process—along with many other direct molding methods—is thus free for all to use. By contrast, the Florida statute purports to prohibit the use of this process—and any other direct molding process—to reproduce any boat hull. The mold statute thus squarely conflicts with the federal patent system's regulation of direct molding processes as well as boat hull designs.

The Florida mold statute is thus far more than an additional form of incentive to invention as petitioner contends. Although the states constitutionally may retain some limited regulatory power over intellectual property, such power cannot be exercised inconsistently with the federal patent policy of free competition in unpatented products. *See Kewanee*, 416 U.S. at 478-79. Yet that is precisely what the Florida statute does. By increasing the cost of copying certain

unpatented products *and* by forbidding the use of unpatented direct molding processes, the mold statute strikes at the heart of the careful balance embodied in the federal patent laws between the need to encourage innovation and the need to preserve competition.

D. The Federal Circuit's Reasoning In *Interpart Corp.* Cannot Be Reconciled With The Objectives Of The Federal Patent Laws

In response to the clear conflict between the Florida mold statute and the federal patent laws, petitioner cites *Interpart Corp.* v. *Italia*, 777 F.2d 678 (Fed. Cir. 1985), for the proposition that the mold statute is not preempted because it prohibits only one method of copying.[17] However, even if the statute does not prohibit all forms of copying, it makes copying far more expensive *and* it prohibits the use of copying processes in the public domain. Indeed, the statute is intended to do nothing else.

The patent laws, by contrast, are designed to do far more than ensure that only *some* minimal amount of competition is possible with respect to unpatented

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[17] Petitioner claims that the *Interpart* decision is entitled to "great weight" because of the Federal Circuit's exclusive jurisdiction in cases arising under the patent laws. But, as the Federal Circuit itself has recognized, "the correct application of the preemption principles voiced in *Sears* and *Compco* is a responsibility which is shared between this Court and the regional circuits." *Cable Electric Products, Inc.* v. *Genmark, Inc.*, 770 F.2d 1015, 1033 (Fed. Cir. 1985). Accordingly, the decision of the Federal Circuit in *Interpart* should be accorded no greater weight than that accorded federal appellate decisions generally.

Petitioner also erroneously asserts that two district court cases—*Metro Kane Imports, Ltd.* v. *Rowoco, Inc.*, 618 F. Supp. 273 (S.D.N.Y. 1985), and *Brahma, Inc.* v. *Joe Yeargain, Inc.*, 665 F. Supp. 1447 (N.D. Cal. 1987)—are in accord with *Interpart*. *See* Pet. Brief at n.7. In neither case did the parties brief, or the court consider, the preemption question.

products. Congress intended competition in such products to be completely unhindered by any state regulation other than laws such as those governing deceptive trade practices. *See Goldstein* v. *California*, 412 U.S. 546, 569-70 (1973). By prohibiting even one form of copying—especially a form which has been found to be "efficient and inexpensive"—the mold statute clashes with federal patent objectives.

Petitioner's suggestion that states may ban some methods of copying as long as alternate methods of copying are still "feasible" is simply unworkable. *See* Pet. Brief, Pt. IV, B. Significantly, petitioner never explains what "feasible" means in this context. If petitioner is suggesting that state restrictions on copying are valid so long as the product can be copied by *some* means no matter the cost or the inaccuracy of the method, the states would be free, as a practical matter, to eliminate all effective competition by banning all but the most expensive and inaccurate copying processes. Alternatively, if "feasible" here means that some method of copying must be allowed that would permit competitors to market accurate copies at competitive prices, troublesome questions would arise: Who is to decide what is a "competitive price"? How much profit must a state allow a competitor? Would someone have to determine whether a competitor's failure to make a profit is the result of the state law or the competitor's own inefficiencies? How accurate must the copy be to be a competitive replacement?[18]

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[18] In this last regard it must be remembered that it is essential in certain forms of competition—such as the automobile replacement parts industry—that the copies be extremely accurate to be at all competitive. It is thus no answer to suggest that the state may prohibit certain forms of copying, such as direct molding, that produce exact copies so long as other, less accurate methods remain available.

Nor is the *Interpart* rationale susceptible to any other limiting principle. If states are free to prohibit the use of any direct molding process, they are free to preclude other methods of copying as well. To be sure, the *Interpart* court stated that the California mold statute did not apply to photographing or measuring the product or to copying it by hand or by using sophisticated machinery. But that court articulated no limiting principle that would prevent a state from characterizing some or all of these other methods as "unfair" and then prohibiting their use. Like the Florida mold statute, any such prohibition designed to make more difficult the competition that Congress sought to preserve would clash with the patent laws and be preempted.

E. The Florida Mold Statute Cannot Be Upheld As An Attempt By The State Of Florida To Promote Notions Of "Fairness"

There is likewise no merit in petitioner's contention that the mold statute is a proper exercise of the state's power to promote notions of commercial ethics and basic fairness in the boat manufacturing industry. That is the very argument this Court rejected in *Sears* and *Compco*. The Court held that any such state interest in regulating the marketplace must yield to the purposes and objectives of the federal patent laws. Those laws embody the federal policy of *encouraging* competition even if competitors profit at the expense of the original manufacturer.[19] As the Florida

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[19] This policy has its roots in the common law. Traditionally, the law has not recognized the mere act of copying a product as unfair. As Justice Brandeis stated in his classic dissent in *International News Service* v. *Associated Press*, later cited by this Court in *Goldstein* and *Kewanee*:

> "Such taking and gainful use of a product of another which, for reasons of public policy, the law has refused to endow with the attributes of property, does not become

Supreme Court stated, "[r]egardless of whether we approve of one capitalizing upon the fruits of another's labor, a competitor is not 'unscrupulous' in the eyes of the patent law if he copies someone else's unpatented invention, irrespective of the manner employed to make the copy." *Bonito Boats*, 515 So. 2d at 223.

Even before *Sears* and *Compco*, this Court rejected an argument strikingly similar to the "fairness" argument raised by petitioner. In *Kellogg Co.* v. *National Biscuit Co.*, 305 U.S. 111 (1938), Nabisco sought an injunction against Kellogg to prevent the manufacture and sale of Shredded Wheat. Because Nabisco's patent on Shredded Wheat had expired, Nabisco did not claim the exclusive right to make the product, but did claim the exclusive right to make the biscuits in a pillow-shaped form. Nabisco argued that its predecessor-in-interest had spent enormous sums in developing a market for the product and that the sale of the same product by Kellogg in the identical form constituted unfair competition. This Court held that patent laws precluded the granting of the injunction:

> "Kellogg Company is undoubtedly sharing in the goodwill of the article known as 'Shredded Wheat'; and thus is sharing in a market which was created by the skill and judgment of plaintiff's predecessor and has been widely extended by vast expenditures in advertising persistently made. *But that is not unfair.* Sharing in the goodwill of an article unprotected by patent or trademark is the exercise of right possessed by all—and in the free exercise of which the consuming public is deeply interested." *Id.* at 122 (emphasis added) (*quoted in Sears*, 376 U.S. at 231).

unlawful because the product happens to have been taken from a rival and is used in competition with him. The unfairness in competition which hitherto has been recognized by the law as a basis for relief, lay in the manner or means of conducting the business; and the manner or means held legally unfair, involves either fraud or force or the doing of acts otherwise prohibited by law." *International News Service* v. *Associated Press*, 248 U.S. 215, 258 (1918) (Brandeis, J., dissenting) (cited in *Goldstein*, 412 U.S. at 570; *Kewanee*, 416 U.S. at 481).

Just as sharing in the goodwill of Shredded Wheat was not "unfair," the copying of an unpatented article in the public domain by an inexpensive molding process cannot be regarded as "unethical" or "unscrupulous." To the contrary, the federal patent laws provide that competition in such an unpatented article is in the public interest.

II. THE DECISIONS OF THIS COURT IN *GOLDSTEIN*, *KEWANEE*, AND *ARONSON* SUPPORT THE JUDGMENT BELOW

Petitioner asserts that three decisions of this Court following *Sears* and *Compco* are inconsistent with the judgment below and require its reversal. To the contrary, those cases support the reasoning and the result of the Florida Supreme Court.

The issue in *Goldstein* v. *California*, 412 U.S. 546 (1973), was whether the federal copyright laws preempted a California record piracy statute that prohibited the direct duplication of musical recordings onto other records or tapes for commercial use. At the time, Congress had not yet included audio tapes or records as "renderings of original artistic performance" within the subject matter of copyright. The Court therefore concluded that Congress had drawn no balance whatsoever with respect to those categories of works and had left the area "unattended." Because there was thus no federal policy with which the state law could clash, the Court held that the California statute was not preempted. *Id.* at 568-70.

Petitioner purports to find in *Goldstein* support for its argument that the *Sears/Compco* doctrine does not preempt state laws, such as the Florida mold statute, that ban only certain methods of copying. The holding in *Goldstein*, however, did not turn on the "limited" scope of the *state* act; rather, it was based on the limited scope of the *federal* copyright statute. As noted above, at the time of the violation of the state act, musical recordings had not yet come within the scope of federal copyright law.[20]

The reasoning of the Court in *Goldstein* directly supports the decision below. *Goldstein* clearly indicated that, with respect to articles or processes that are within the scope of patent law—such as boat hulls and direct molding processes—the *Sears/Compco* doctrine would apply to preempt state restrictions on use or copying:

> "In regard to mechanical configuration, Congress had balanced the need to encourage innovation and originality of invention against the need to insure competition in the sale of identical or substantially identical products. The standards established for granting federal patent protection to machines thus indicated not only which articles in this particular category Congress wished to protect, but which configurations it wished to remain free. The application of state law in [*Sears* and *Compco*] to prevent the copying of articles which did not meet the requirements for federal protection disturbed the careful balance which Congress had drawn

[20] Similarly, *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977), is inapposite because the subject matter of that case—a "human cannonball" performance—did not fall within the subject matter of copyright or patent law.

> and thereby necessarily gave way under the Supremacy Clause of the Constitution. No comparable conflict between state law and federal law arises in the case of recordings of musical performances." *Id.* at 569-70.

Petitioner also relies on *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470 (1974), in which this Court held that the federal patent laws do not displace state laws that prohibit the improper disclosure of trade secrets.[21] But *Kewanee* does not help petitioner. As the Court recognized in *Kewanee*, trade secret law provides protection solely against the unauthorized disclosure or fraudulent use of a "secret"—that is, something by definition not within the public knowledge or the general knowledge of a trade or business. *Id.* at 475. By contrast, the patent laws deal with inventions fully disclosed to the public. Thus, trade secret law does not "clash" with the federal patent policy of free competition because trade secret law, by its very nature, does not extend to products in the public domain. As the Court stated in *Kewanee*:

> "[T]he [federal patent] policy that matter once in the public domain must remain in the public domain is not incompatible with the existence of trade secret protection. By definition, a trade secret has not been placed in the public domain." *Id.* at 484.

Far from repudiating *Sears* and *Compco*, the *Kewanee* Court confirmed the preeminence of the federal policy of free competition with respect to products or

[21] The *Kewanee* Court also held that the constitutional grant of power to Congress with respect to discoveries was not exclusive and that states were not prohibited by the Patent Clause of the Constitution "from encouraging and protecting the efforts of those within their borders by appropriate legislation." *Kewanee*, 416 U.S. at 478-79.

processes—like boat hulls or direct processes—which are in the public domain: "[T]hat which is in the public domain cannot be removed therefrom by action of the states." *Id.* at 481.[22]

Finally, petitioner seeks to draw support from *Aronson* v. *Quick Point Pencil Co.*, 440 U.S. 257 (1979), in which the Court held that the *Sears/Compco* doctrine did not nullify a private agreement to pay royalties in exchange for the disclosure of a product and the right to sell such product, even though it later proved to be unpatentable. Like *Kewanee*, *Aronson* does not help petitioner, for there too the state law enforcing the agreement did not conflict with the patent policy of free competition. Essential to the Court's holding was the fact that the product licensed was not in the public domain prior to the license and that upholding the agreement placed no restrictions on would-be competitors who might seek to copy the product after it was marketed. *Id.* at 263-64. As in *Kewanee*, the Court reaffirmed the essential holding of *Sears* and *Compco*: "We have held that a state may not forbid the copying of an idea in the public domain which does not meet the requirements for federal patent protection." *Id.* at 264.

Goldstein, *Kewanee*, and *Aronson* thus do not represent a "step back" from the holdings of *Sears* and *Compco*. Those cases merely recognize that certain state laws that deal with items which either have not been disclosed to the public or are left unattended *outside* the scope of the federal patent or copyright

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[22] The Court also noted in *Kewanee* that "[t]rade secret law and patent law has coexisted in this country for over one hundred years." *Id.* at 493. Based on this finding, the Court held that Congress "by its silence" had indicated that it did not intend to preempt trade secret law. *Id.* No such finding can be made here. The mold statutes are relatively new legislation that ban methods of copying that have never previously been prohibited.

laws present no obstacle to the accomplishment of the full purposes of Congress and therefore are not preempted. In each of the three cases, this Court reaffirmed the central teaching of *Sears* and *Compco* which is dispositive in this case: State laws that restrict the copying of unpatented products or the use of unpatented processes already in the public domain frustrate the purposes of the federal patent laws and are therefore preempted.

III. NONE OF THE OTHER ARGUMENTS WARRANTS REVERSAL OF THE JUDGMENT BELOW

The other arguments presented for reversal of the judgment below are also unavailing.

1. Certain *amici*[23] argue that the mold statute does not so much restrict copying of an unpatented product as it protects the property of the original manufacturer in the production mold. According to this view, any direct molding process misappropriates the *mold* from which the original boat hull was initially cast.

This argument, however, glosses over the fact that violators of the Florida mold statute do not use the original manufacturer's mold. By definition, a direct molding process is one in which the copier makes a *new* mold from the original manufacturer's *finished product*. Nothing is "misappropriated"; rather, the copier uses only that which the manufacturer has willingly placed in the public domain and is therefore free for all to use. The original manufacturer has no more right to prevent the recreation of his mold than he has to prevent the copying of his product.

2. The Boston Whalers, Inc., and the International Property Owners, Inc., ("IPO") argue that the Florida

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[23] *See* Brief of Marine Indust. Assoc. of South Florida and the Atty. Gen. of Fla. at 14; Brief of Imos Italia and Torino Industries, Ltd., at 12, 22.

mold statute does not conflict with the federal patent system because patent laws do not purport to regulate "unfair competitive practices" or the "direct copying of industrial designs." This argument misconstrues the scope of patent protection. Although Congress has not purported to regulate "ethics" and "fairness" as such in the marketplace, the federal patent laws comprehensively regulate the extent to which manufactured products and processes are to be the subject of free and open competition. A state cannot avoid the preemptive effect of that congressional decision by simply labeling the subject matter of its law "unfair competitive practices." *Sears* and *Compco* definitively established that.

Moreover, Congress has clearly regulated the copying of industrial designs. As described above, industrial designs (such as boat hulls or automobile fenders) may qualify for a design or utility patent if they are sufficiently novel. Those that do not meet the federal standard, however, fall within the category of articles that "Congress . . . wished to remain free." *Goldstein*, 412 U.S. at 569.

To be sure, pending federal legislation supported by OEM manufacturers of boat hulls and automobile crash parts would make it easier to obtain federal protection against the copying of industrial designs currently within the scope of the patent laws. *See* H.R. Rep. No. 1173, 100th Cong., 2d Sess., 133 Cong. Rec. H735 (daily ed. Feb. 19, 1988). But until and unless that legislation is enacted—and Congress has thus far rejected a number of similar bills—publicly disclosed industrial designs must either meet the requirements of the existing patent law or they are in the public domain—free for all to make, use or sell.[24]

[24] Indeed, whatever the merits of these proposed bills, the congressional debate is further evidence that the proper balance between the promotion of true innovation and the maintenance of a competitive economy must be made on a national basis by Congress rather than in a piecemeal, inconsistent fashion by state legislators.

3. The case of *International News Service* v. *Associated Press*, 248 U.S. 215 (1918) ("INS"), cited in support of petitioner's position, is likewise inapposite. As this Court noted, that case dealt with the appropriation of "news"—a matter which was not (and is not) within the subject matter of patent or copyright law. *Id.* at 232. Thus, the *INS* Court did not consider the preemptive effect of the copyright act.

Moreover, 70 years of patent preemption cases cast serious doubt on the vitality of *INS*. *See, e.g.*, Treece, *Patent Policy and Preemption: The Stiffel and Compco Cases*, 32 U. Chi. L. Rev. 80, 95 (1964). At least one circuit court has held that *INS* "has clearly been overruled" by *Sears* and *Compco*. *Columbia Broadcasting System, Inc.* v. *DeCosta*, 377 F.2d 315, 318 (1st Cir.), *cert. denied*, 389 U.S. 1007 (1967). Other courts have distinguished *INS* on a variety of grounds, none of which support the application of *INS* here. *See, e.g.*, *Financial Information, Inc.* v. *Moody's Investors Service, Inc.*, 808 F.2d 204, 209 (2d Cir. 1986), *cert. denied*, 108 S. Ct. 79 (1987); *Cable Vision, Inc.* v. *KUTV, Inc.*, 335 F.2d 348, 352 (9th Cir. 1964), *cert. denied*, 379 U.S. 989 (1965); *Triangle Publication, Inc.* v. *Sports Eye, Inc.*, 415 F. Supp. 682, 686 (E.D. Pa. 1976). Finally, this Court's opinions in both *Goldstein* and *Kewanee* cited *INS* only for Justice Brandeis' dissent. *See Goldstein*, 412 U.S. at 570; *Kewanee*, 416 U.S. at 481.

There is, in short, no merit in petitioner's attempt to use the 1918 *INS* decision, which did not involve products subject to patent or copyright protection, to undercut *Sears* and *Compco*—cases decided 45 years later in the context of items which, like the boat hulls

at issue in this case, were subject to the federal patent system.

4. Finally, IPO cites the Semiconductor Chip Protection Act of 1984 ("Chip Act"), Pub. L. No. 98-620, Title III, 98 Stat. 3347 (1984) (codified at 17 U.S.C. §§ 901-914 (Supp. II 1984)), as evidence that Congress did not intend the federal patent laws to preempt the state mold statutes. That Act, however, created a new type of federal intellectual property protection, phased in over a period of years, solely for semiconductor chips. *See* 17 U.S.C. § 913 (Supp. II 1984). The inclusion of an effective date in the Act's preemption provision reflects no congressional bow to state regulatory authority, but only a prudent desire to delay the preemptive impact of the new federal rights, whatever that impact might be. Nothing in the legislative history of the Chip Act indicates that Congress ever considered whether state law could provide a remedy against the electronic copying of a chip's layout, absent the Act's preemptive provisions. *See generally* Note, *Semiconductor Chip Protection: Changing Roles for Copyright and Competition*, 71 Va. L. Rev. 249, 272 (1985) (noting that misappropriation protection for an integrated circuit would be preempted under *Sears* and *Compco*).

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Florida Supreme Court.

Respectfully submitted,

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September 15, 1988

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

FORD MOTOR COMPANY, a Delaware corporation, Plaintiff, v. KEYSTONE AUTOMOTIVE INDUSTRIES, INC., a California corporation, Defendant.	)	Civil Action No. 87CV719000T **COMPLAINT**

COUNT I. UNFAIR COMPETITION

1. Plaintiff, Ford Motor Company ("Ford") is a Delaware corporation with its principal place of business at The American Road, Dearborn, Michigan 48121.

2. Defendant Keystone Automotive Industries, Inc. ("Keystone") is a California corporation with its principal corporate offices at 700 East Bonita Avenue, Pomona, California 91767, and, on information and belief, with its principal manufacturing facility at No. 92 Kuang Fu North Road, Hsin, Chu, Industrial Zone, Hukou Hsiang, Hsinchu Hsieh, Taiwan, The Republic of China.

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4. This Court has jurisdiction by virtue of the facts that this is a civil action arising under the Trademark Laws of the United States, 15 U.S.C. §§ 1051-1127, jurisdiction being expressly conferred in accordance with 15 U.S.C.

§ 1121 and 28 U.S.C. § 1338(a). This Court has pendant jurisdiction over all related claims herein in accordance with 28 U.S.C. § 1338(b).

5. Ford is engaged in the manufacture, advertising and sale of a wide variety of motor vehicles. Incident to such activity, Ford also sells automotive parts and accessories for such motor vehicles, and related products and services, including Ford automotive body replacement parts (*e.g.*, hoods, fenders).

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9. Defendant Keystone, on information and belief, imports from Taiwan, and markets, sells and distributes in the United States, including Michigan, both directly and through authorized distributors, a line of spurious Ford automotive body replacement parts.

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COUNT IV. WRONGFUL PRODUCT COPYING BY DIRECT MOLDING PROCESS

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29. On information and belief, Keystone's spurious Ford automotive body replacement parts are manufactured by means of a process in which an original genuine Ford automotive body replacement part is used as a pattern for making the molds or dies which are used to manufacture said spurious automotive body parts.

30. Defendants aforesaid acts constitute violations of direct molding process acts of the several states.

WHEREFORE, as to Counts . . . IV, Ford prays that:

1. Defendants, their officers, agents, servants, employees and attorneys, and all others who are in active concert or participation with them:

• • •

b. be enjoined from maufacturing, importing, marketing, selling and distributing automotive body replacement parts manufactured by means of any process in which an original Ford part is used as a pattern for making a mold used to manufacture copies of the genuine Ford parts.

• • •

United States Patent [19] [11] **4,128,072**
Wood, Jr. [45] **Dec. 5, 1978**

[54] POWER BOAT HULL

[75] Inventor: Garfield A. Wood, Jr., Monroe, La.

[73] Assignee: Woodstream Corporation, Lititz, Pa.

[21] Appl. No.: 779,845

[22] Filed: Mar. 21, 1977

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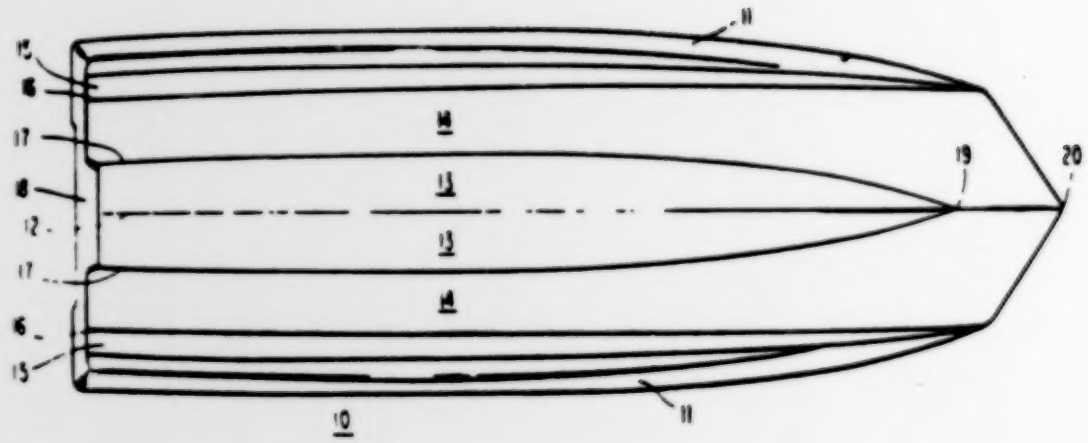
[57] ABSTRACT

A power boat hull having sides and a bottom formed of a series of vertically stepped panels disposed symmetrically on either side of the hull center line. The series of panels on either side of the hull center line include an inboard panel, a center panel and an outboard panel. Vertical risers join the adjacent edges of the center and outboard panels and extend substantially parallel to the hull center line. Vertical risers join the adjacent edges of the center and inboard panels and extend on opposite sides of the hull center line from the stern to a point of intersection on the center line adjacent the bow. The panels are angled upwardly from the horizontal, outwardly of the hull center line with such angularities decreasing between successive panels in the outboard direction at all stations along the length of the hull except at the stern, the angularities of each inboard and center panels increasing from the stern toward the bow while the angularities of the outboard panels remain constant.

5 Claims, 7 Drawing Figures



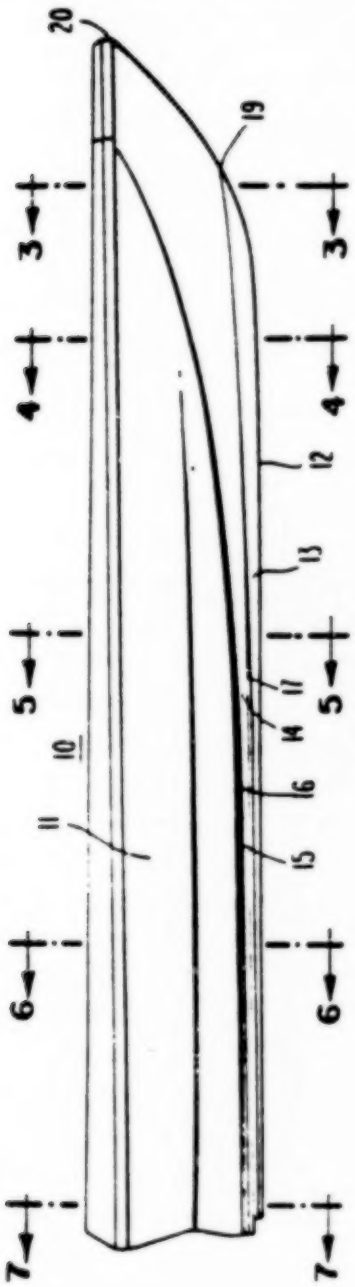


Fig. 1

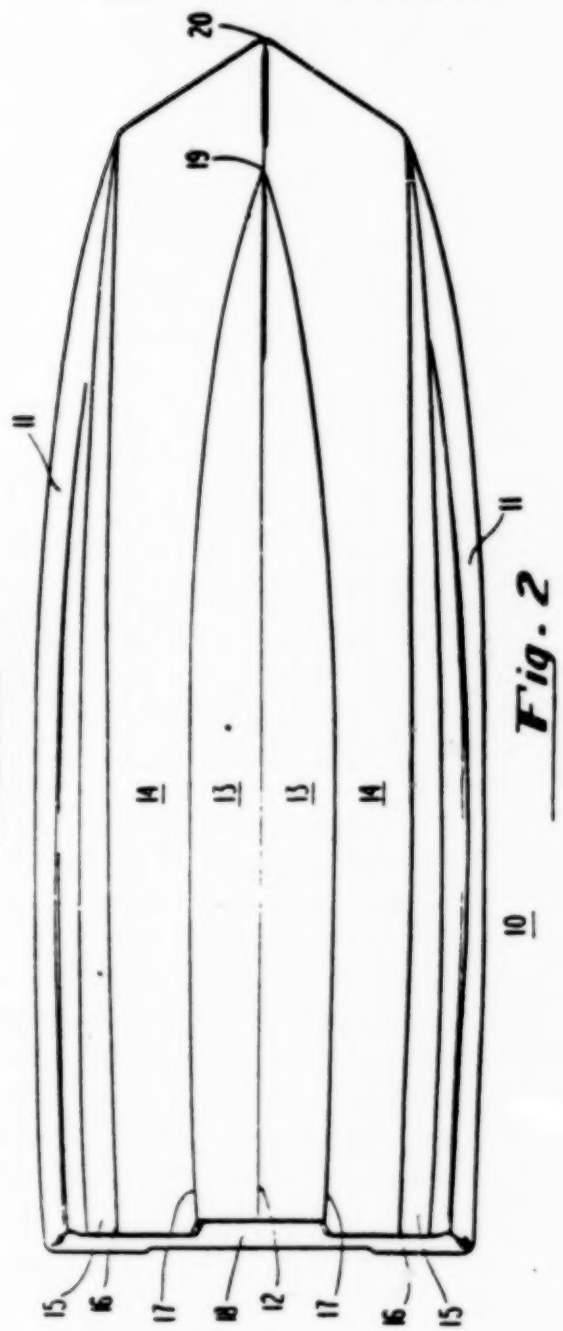


Fig. 2

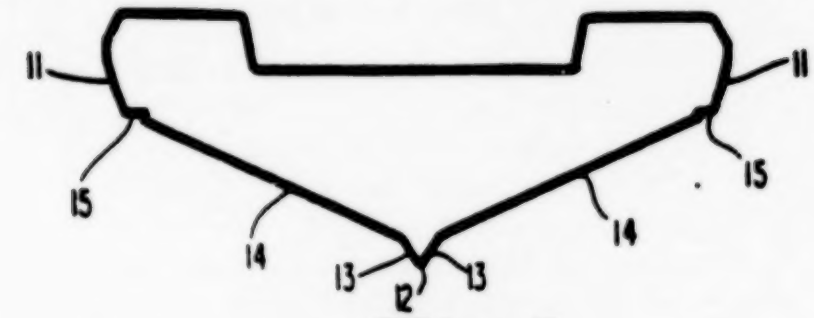


Fig. 3

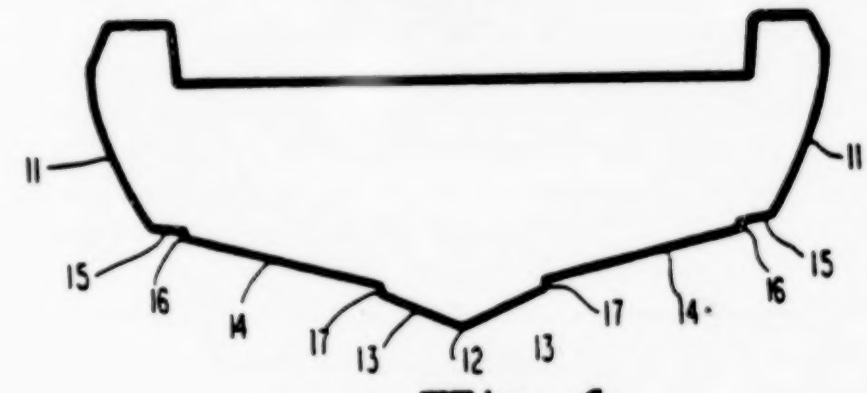


Fig. 4

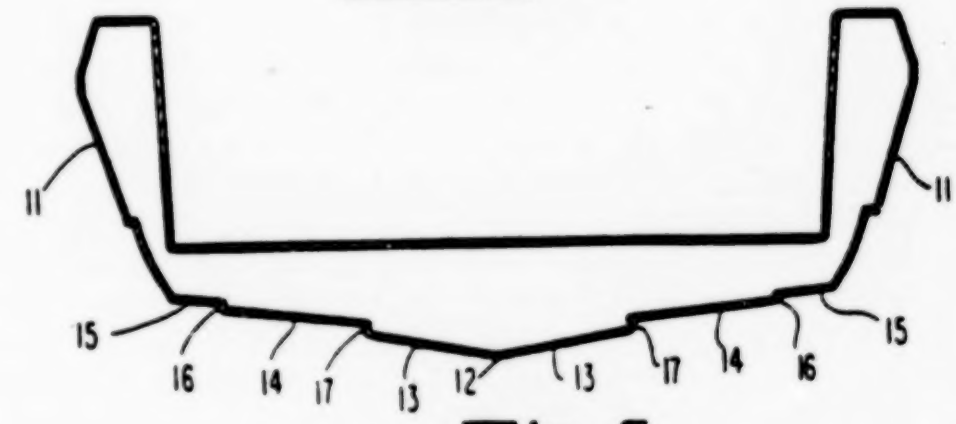


Fig. 5

U.S. Patent Dec. 5, 1978 Sheet 3 of 3 4,128,072

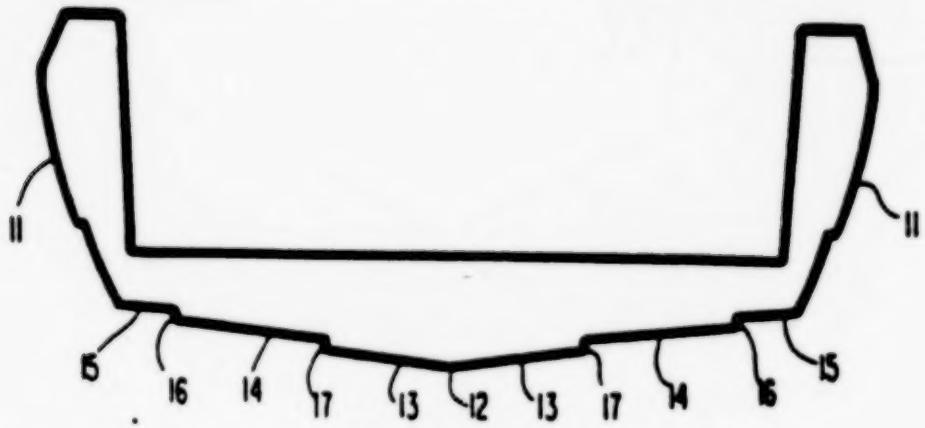


Fig. 6

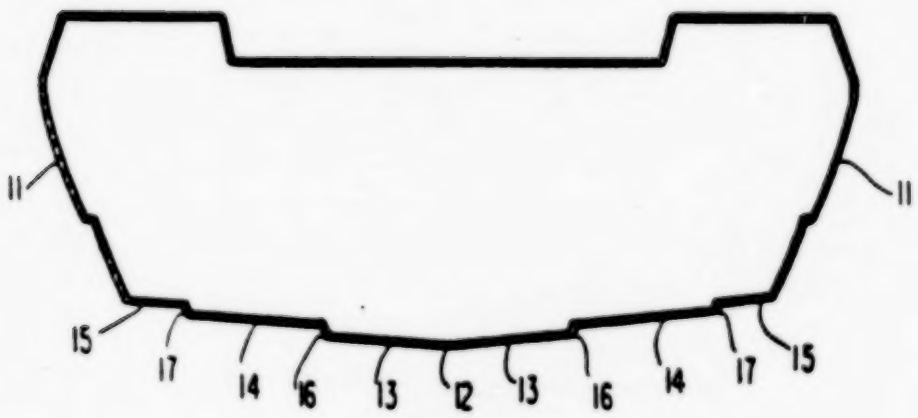


Fig. 7

POWER BOAT HULL

BACKGROUND OF THE INVENTION

Power boats of the general type to which the present invention is directed are known in the trade as bass boats. One of the most popular hulls for a bass boat is the "deep-V" hull, the bottom of which comprises essentially a single panel on either side of the center line or keel of the hull extending to the chine. The bottom has constant dead rise of 21° to 23° of angle from the horizontal. It usually has two stabilizing strips on each side of the keel. However, the deep-V hull requires high horse power for efficient performance, is unstable at low speeds and at rest and, because of deep draft, will not operate in shallow water. The standard V hull requires considerably less power for efficient operation than the "deep-V" and will operate in shallow water. However, it is a notoriously rough rider and has become less popular because of this. Another popular prior art hull is the ABF hull which is a modified deep-V hull with a center pad. The bottom pad panel on either side of the pad has a constant dead rise of 17° and the pad is essentially flat. The ABF hull will operate in shallow water, however, it requires high horse power for efficient performance. A typical ABF hull design is manufactured by Delhi Manufacturing Corporation, Delhi, La. under the model designation Terry American Bass Fisherman (Terry ABF) and is described in the article "There's A New Breed of Bass Boat: The High-Stepping High Performers" by Dave Ellison, Bassmaster Magazine, November/December, 1975, pages 42-51 along with other similar high performance bass boats having a deep or semi-V hull and bottom running pad. Another type of prior art boat hull which requires high horse power for efficient performance is disclosed in Moesly U.S. Pat. No. 3,237,581.

SUMMARY OF THE INVENTION

It is an object of the present invention to provide an improved power boat hull which obtains highly efficient

performance with less horsepower and without the need of power trim which adds several hundred dollars to the cost of the motor in any horsepower range. Thus, it is an object of the invention to provide a less expensive power boat and motor combination, both from an initial standpoint and from subsequent operational costs. It is a further object of the invention to provide an extremely stable hull both while running at all speeds and at rest. It is a still further object of the invention to provide a hull which will operate in extremely shallow water and still give a soft ride. Thus it will be seen that it is an object of the invention to provide a new and improved boat hull which incorporates the best features of the previously described prior art hulls while minimizing the objectionable features.

In accordance with the present invention there is provided a power boat hull having sides and a bottom, the bottom being formed of a series of vertically stepped panels disposed symmetrically on either side of the hull center line, the series of panels on either side of the hull center line including an inboard panel, a center panel and an outboard panel. Vertical risers join the adjacent edges of the center and outboard panels and extend substantially parallel to the hull center line. Vertical risers join the adjacent edges of the center and inboard panels and extend on opposite sides of the hull center line from the stern to a point of intersection on the center line adjacent the bow. The panels are angled upwardly from the horizontal, outwardly of the hull center line with such angularities decreasing between successive panels in the outboard direction at all stations along the length of the hull except at the stern, the angularities of each of the inboard and center panels increasing from the stern toward the bow while the angularities of the outboard panels remain constant.

* * *

United States Patent **Des. 235,753**
Patented July 8, 1975

235,753

BOAT HULL

Harry Bremer, Box 488, Elkhart Lake, Wis. 53020

Filed Oct. 31, 1973, Ser. No. 411,478

Term of patent 14 years
Int. Cl. D12-06
U.S. Cl. D12-62

Fig. 1

Fig. 2

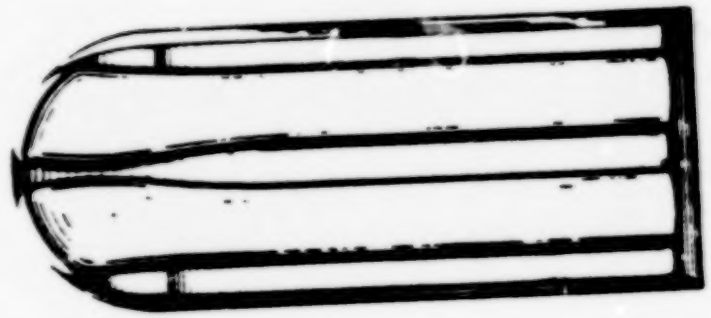


Fig. 3

Fig. 4

FIG. 1 is a side elevation of the boat hull.
FIG. 2 is a bottom view of the boat hull.
FIG. 3 is a view of the bow of the boat hull.
FIG. 4 is a view of the stern of the boat hull.
I claim:

The ornamental design for a boat hull, substantially as shown and described.

References Cited
UNITED STATES PATENTS

D.232.116	7/1974	Theodosis	D12—62 X
D.220.407	4/1971	Kovach	D12—62
D.107.724	12/1937	Luders	D12—62
2.887.978	5/1959	Tritt	114—66.5 R

ALAN P. DOUGLAS, Primary Examiner

United States Patent [19] [11] **Des. 246,166**
Meek [45] ****Oct. 25, 1977**

[54] BOAT HULL

[76] Inventor: Robert P. Meek, P.O. Box 234C, Goleta, Calif. 93017

[**] Term: 14 Years

[21] Appl. No.: 665,162

[22] Filed: Mar. 8, 1976

Related U.S. Application Data

[63] Continuation of Ser. No. 496,700, Aug. 12, 1974.

[51] Int. Cl. ..... D12—06
[52] U.S. Cl. D12/62
[58] Field of Search ..... D12/62; 114/66.5 R, 114/66.5 P, 56

[56] References Cited

U.S. PATENT DOCUMENTS

3,077,172	2/1963	Dornak	D12/62 UX
3,162,167	12/1964	Wynne	114/66.5 R
3,303,809	2/1967	Ross	114/66.5 R X

Primary Examiner—Alan P. Douglas
Attorney, Agent, or Firm—Barry L. Haley

[57] CLAIM

The ornamental design for boat hull, as shown and described.

DESCRIPTION

FIG. 1 is a side elevational view of Applicant's boat hull.
FIG. 2 is a bottom plan view of Applicant's boat hull.
FIG. 3 is a cross-section of Applicant's boat hull in a forward portion through line 1—1.

FIG. 4 is a cross-sectional view of Applicant's boat hull in the stern area through line 2–2.
The appearance of the boat hull from the top is substantially the same as the bottom view shown.

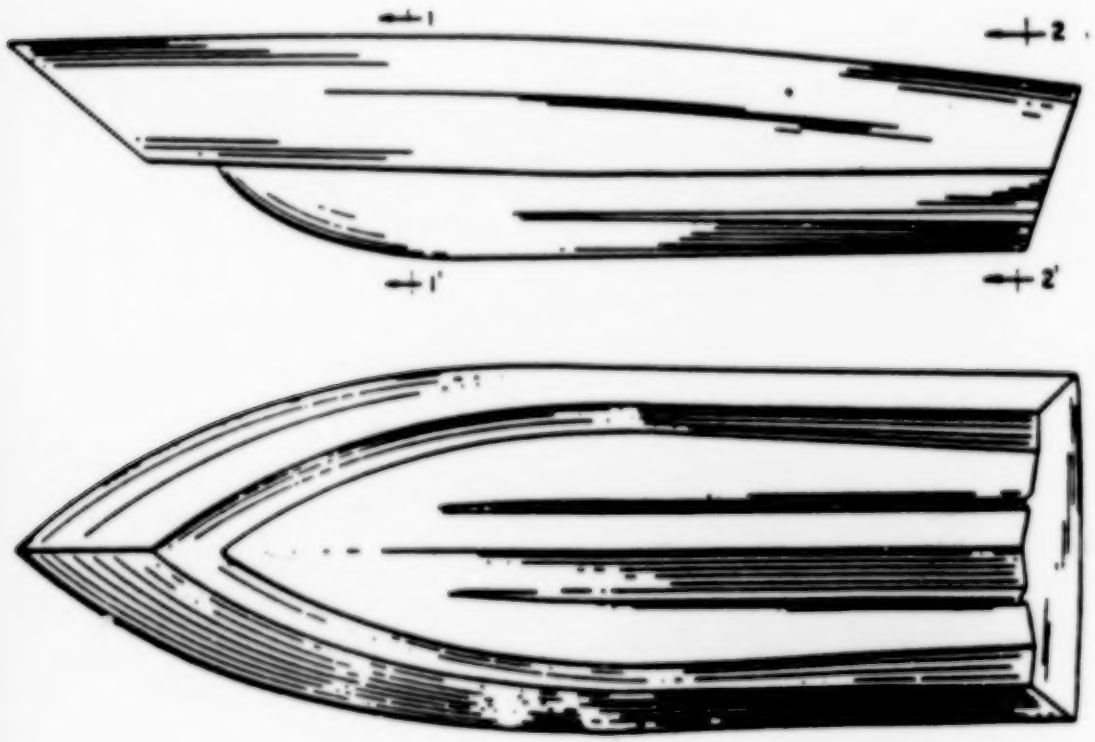


Fig. 1.

Fig. 2.

Fig. 4.

Fig. 3.

United States Patent [11] **Des. 257,530**
Moyer [15] ****Nov. 18, 1980**

[54] BOAT HULL

[76] Inventor: Richard D. Moyer, 45 Ardmore Ave., Hermosa Beach, Calif. 90254

[**] Term: 14 Years

[21] Appl. No.: 871,559

[22] Filed: Jan. 23, 1978

[51] Int. Cl. ..... D12—06
[52] U.S. Cl. D12/70; D12/62
[58] Field of Search D12/62, 70; 114/56, 114/61, 290, 288, 291

[56] References Cited

U.S. PATENT DOCUMENTS

D. 224,275 7/1972 Cole D12/62
3,996,869 12/1976 Hadley 114/61

Primary Examiner—Sam Rosen
Attorney, Agent, or Firm—Thomas P. Mahoney

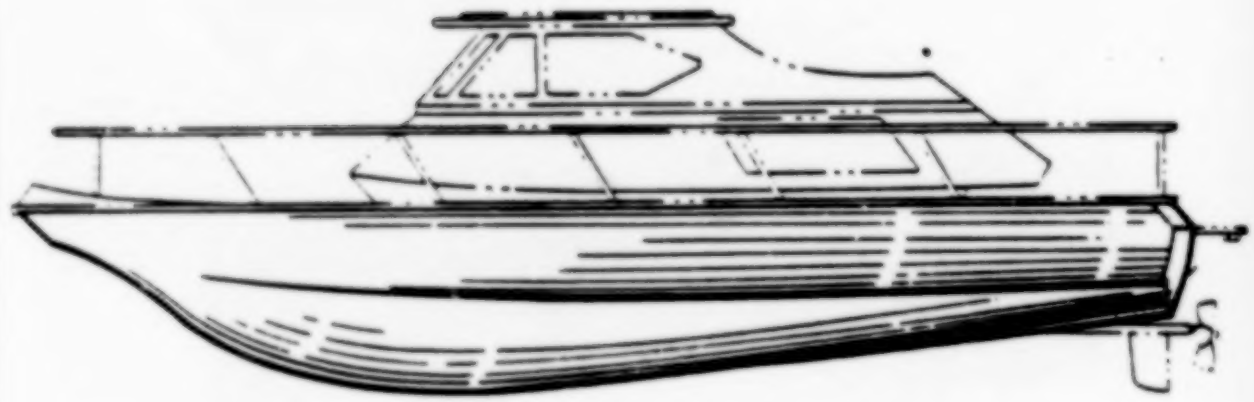
[57] CLAIM

The ornamental design for a boat hull, as shown and described.

DESCRIPTION

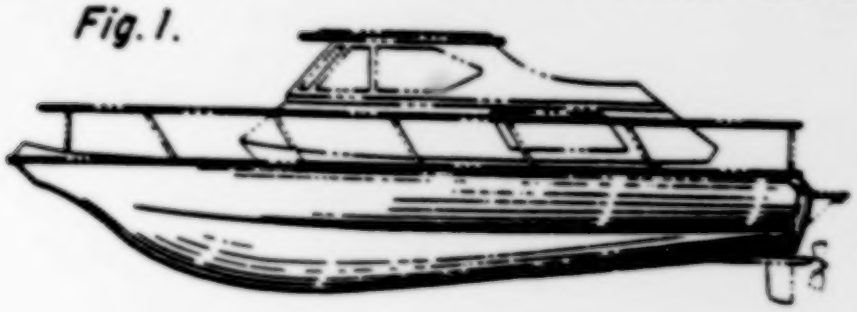
FIG. 1 is a side view of my boat hull design with the portion represented in phantom line being for illustrative purposes only and not forming a part of my design;
FIG. 2 is a top view thereof;
FIG. 3 is a bottom view thereof;
FIG. 4 is a front view thereof;
FIG. 5 is a rear view thereof;
FIG. 6 is a view taken along the line 6—6 of FIG. 2;

FIG. 7 is a view taken along the line 7—7 of FIG. 2; and
FIG. 8 is a view taken along the line 8—8 of FIG. 4.



U.S. Patent Nov. 18, 1980 Sheet 1 of 2 Des. 257,530

Fig. 1.



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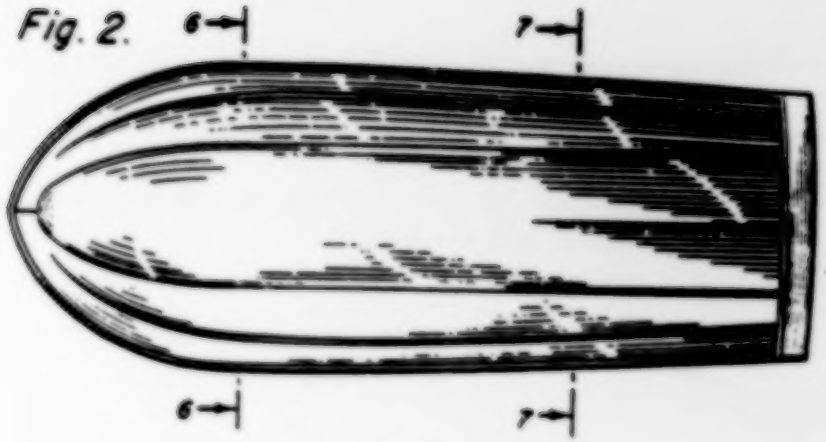

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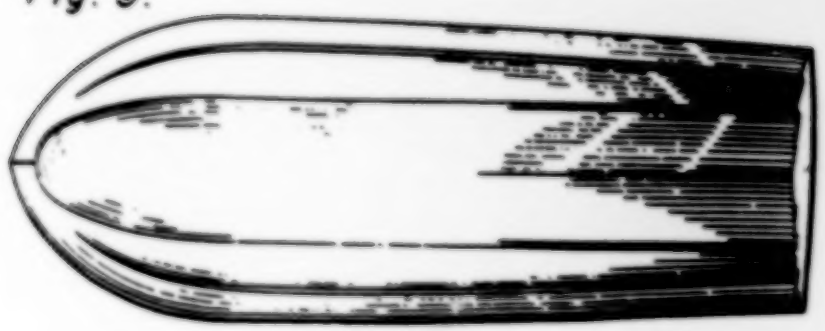
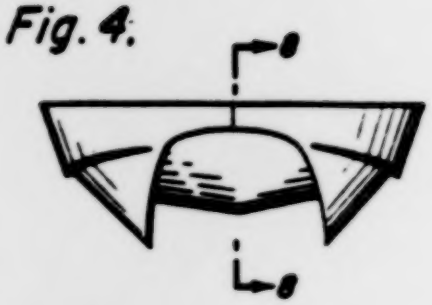


U.S. Patent Nov. 18, 1980 Sheet 2 of 2 Des. 257,530

Fig. 4.



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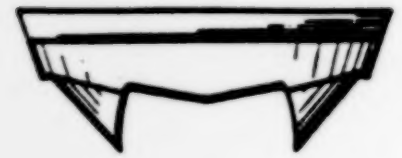


Fig. 6.

Fig. 7.

Fig. 8.

Dec. 31, 1968 R.L. SMITH 3,419,646

METHOD FOR MAKING AN EARTH PIT MOLD FOR A PLASTIC BOAT HULL

Filed Sept. 13, 1966

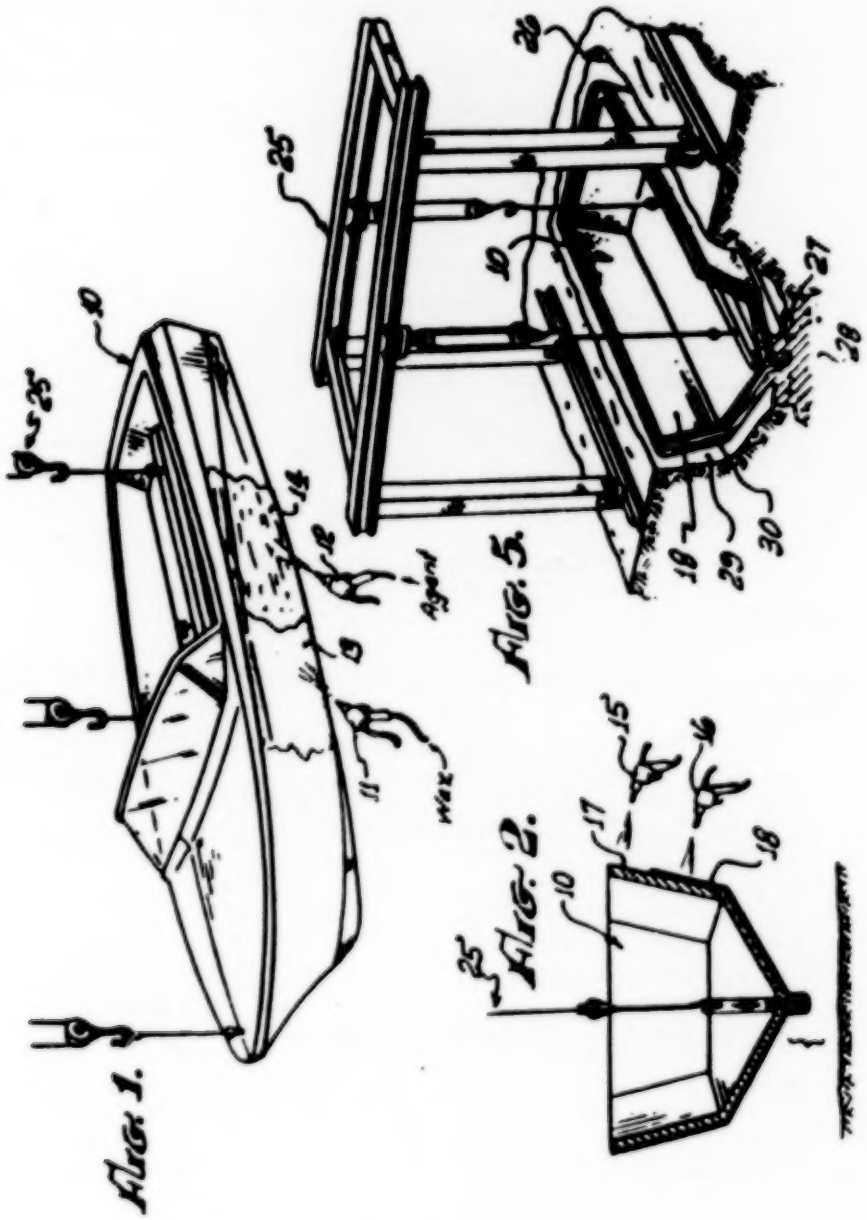
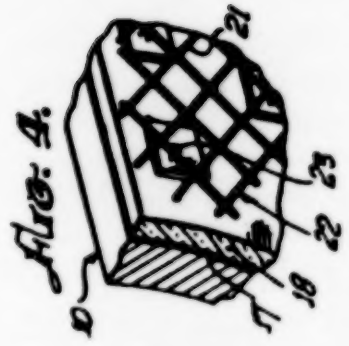


Fig. 1.

Fig. 5.

Fig. 2.



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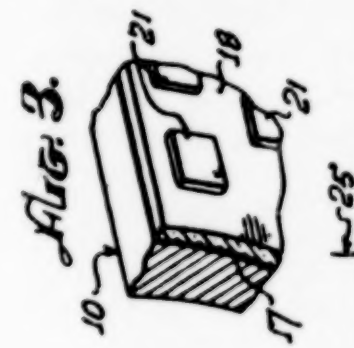

Fig. 3.

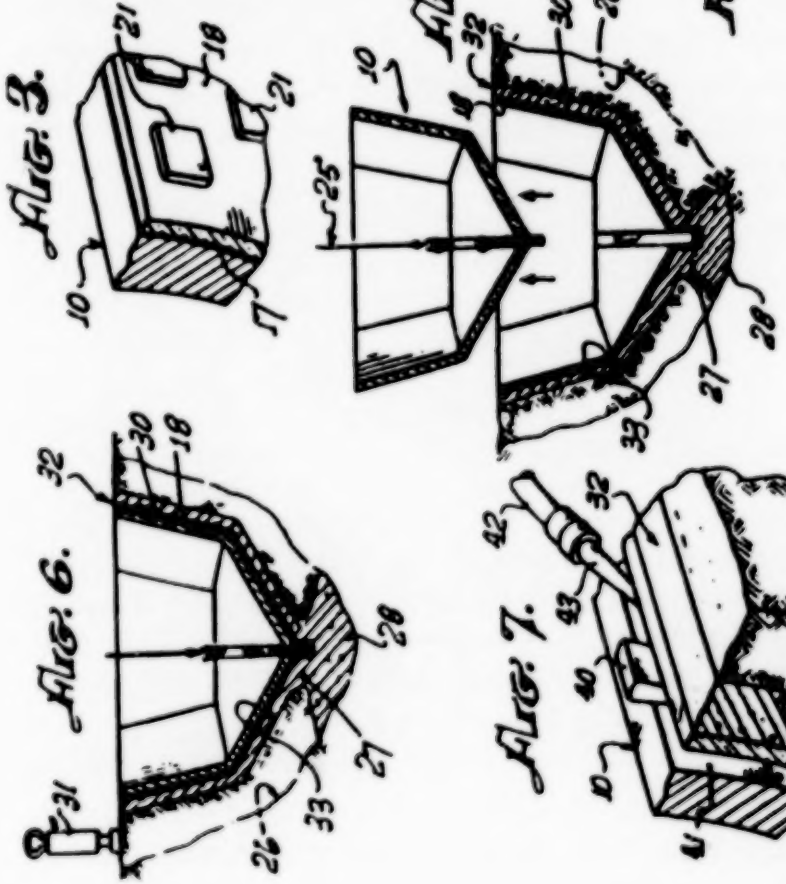

Fig. 8.

Fig. 6.

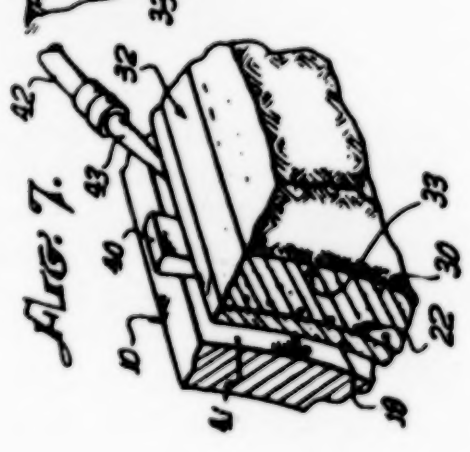

Fig. 7.

INVENTOR.
ROBERT L. SMITH,
By Edmund F. Hamilton
ATTORNEY.

United States Patent Office 3,419,646
Patented Dec. 31, 1968

3,419,646

METHOD FOR MAKING AN EARTH PIT MOLD FOR A PLASTIC BOAT HULL

Robert L. Smith, 1331 33rd St.,
Bakersfield, Calif. 93301

Filed Sept. 13, 1966, Ser. No. 579,090
7 Claims. (Cl. 264—32)

This invention relates generally to the making of a mold to duplicate very large plastic objects, such as a fiber glass boat hull.

More particularly, the invention relates to such a method in which a prototype hull is first coated in several layers to form a precisely fitting mold liner structure, and thereafter, a massive mold supporting structure is formed from successive applications of steel reinforcing, spray-deposited concrete, and tamped earth, within a mold-accommodating pit.

Plastic-covered fiber glass has become the most widely accepted material for small boat hulls. Beginning a few years ago with pleasure boat hulls ten or twelve feet long, fiber glass construction has slowly displaced wood as the most popular material in boat hulls of greater and greater length. At the present time, fiber glass boat hulls between thirty and fifty feet in length are not uncommon and may come to dominate the field.

Although such boat hulls are referred to as "small," because they are small in size relative to the full range of boats and ships, they must be considered as enormous plastic moldings, since they dwarf almost all objects molded from plastic outside the boat hull field. However, it will be understood that large objects other than boat hulls are being fabricated from fiber glass plastic, and the method

method prescribed herein is intended to be claimed with respect to other large objects, although its best present use and the following explanation of its application, is made with reference to a boat hull which is large with reference to the molded dories and outboard motor boats which have been mass-produced from fiber glass plastic in past years.

The construction of a mold for the larger plastic molded boat hulls has, in the past, required a major capital investment for each mold. It is a major object of the present invention to provide a method for making large molded boat hull molds at very low cost, once a prototype hull has been provided. Such a hull may be a fiber glass boat hull built from an extremely expensive prototype model or the prototype hull may be a wooden hull constructed by conventional means, which it is now desired to reproduce in fiber glass.

By means of the method herein disclosed, a number of relatively inexpensive molds may be constructed in order to expand production facilities. On the other hand, no costly and expensive mold of large size needs to be stored, as long as a single prototype of the desired boat hull is available from any source. Finally, a very large mold can be stored conveniently in many shipyards and boatworks, since the mold of the first construction is supported below the surface of the earth and may be filled in to ground level when not in use, and then excavated later.

Large boat hull molds presently constructed require massive external reinforcing. This reinforcing is generally of steel, and has several undesirable characteristics. It is subject to temperature expansion and contraction. The massive weight of the hull may cause the mold to be deformed in the later stages of construction. It is a major object of the present invention to eliminate most of the costly steel bracing and supporting structure, and to provide an even stronger structure comprised of reinforced concrete and tamped earth in an earth pit.

Another major object of the invention is to provide a massive boat hull mold in which the mold is lined with a fine, smooth, and perfectly duplicating liner surface, and supported on a mold support structure as previously mentioned, but in which the entire mold construction, both liner and mold support, are unitary and integrated in a single solid unit. Large molds of the past have often been subject to failure because the liner and the mold support were not truly unitary in construction, and one part yielded to the destructive deformation of the other.

The foregoing, and other objects and advantages of the invention will be undertsood from the following description of one preferred method for the practice of the invention, the steps of said method being illustrated in the accompanying drawings, in which:

FIGURE 1 is a perspective view of a prototype hull, which is shown suspended from the pulleys of a travelling crane, while it receives certain mold-release coatings;

FIGURE 2 is a transverse sectional view of the prototype hull of FIGURE 1, as it receives the plastic liner material which is used to form the precision fitting inner surface layer of the mold;

FIGURE 3 is a perspective view of a fragment of the prototype hull, shown partly in section, and revealing the step of attaching furring patches;

FIGURE 4 is a perspective view of the fragment of FIGURE 3, showing the step of attaching steel netting reinforcement spaced outward from the mold liner layer;

FIGURE 5 is a perspective view of the prototype hull, transversely sectioned at about mid-length, as it appears in the mold-supporting pit, after the application of cement;

FIGURE 6 is a transverse sectional view of the prototype hull and mold showing the step of tamping earth into mold-supporting position;

FIGURE 7 is a perspective view of an enlarged fragment of hull, mold, and earth, seen partly in cross-section, and showing the wedge and water nozzle used for achieving the separation of the prototype hull; and

FIGURE 8 is a transverse sectional view of the mold pit and the prototype hull as it is lifted out of the pit-supported mold produced by the process of the invention.

In FIGURE 1, a prototype hull 10, which it is desired to reproduce, is shown in perspective as it is supended from a crane. Usually, the prototype will itself be a fiberglass plastic boat, but it is to be understood that the method of the invention is well-suited to making fiber glass reproductions of suitable steel or wood hulls.

• • •

It will be seen from the foregoing description that I have provided a novel and extremely economical method for building boat hulls of the largest size deemed practical for fiber glass construction. It should be understood that the scope of the invention is not limited to the details and precise dimensions set forth for purposes of illustration in the foregoing example, which was described in specific detail. Instead, all modifications, variations, and improvements which fall within the scope of the following claims are included within the scope of the present invention.

What is claimed is:

1. A method for making a mold for reproduction in plastic construction of a prototype hull or the like, which method includes the steps of:

preparing a surface of said prototype hull with a coating of water-soluble mold release materia;

depositing a mold liner layer of plastic material over said mold release coating;

attaching furring spacers to said plastic coating;

curing said liner coating;

attaching reinforcing mears to said furring means:

supporting said prototype hull in an upwardly opening position in an earth pit having sides spaced away from the outer coated sides of said hull partly by suspension from above and partly by resting the lowermost surface of said hull in a pad of soft concrete in the bottom of said pit;

spraying a wet concrete mixture over the plastic coating, and said reinforcing and furring means, on the outer surfaces of said hull to make a rigid mold support structure in the form of a concrete shell integral with said liner layer;

after said concrete shell has hardened, filling the space in said earth pit outside the shell with packed earth to firmly support said mold; and

introducing water between the outer surface of said prototype hull and said mold liner layer, to wash away said water soluble mold release material and permit the withdrawal of said prototype hull.

* * *